

May 28, 2004

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Ms. Robin Sweeney
Office of National Transportation
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1551 Hillshire Drive, M/S 011
Las Vegas, NV 89134

Dear Ms. Sweeney:

Supplementing my other comments regarding the rail alignment to the Yucca Mountain repository dated May 28, 2004, on behalf of Dia Art Foundation I would like to submit two additional procedural comments supporting our fundamental opposition to DOE's selection of Caliente Corridor. In particular, I believe that DOE did not adequately study the five proposed routes in accordance with industry standards, and that DOE did not adequately provide opportunity for public participation in the decision of a rail line.

1. DOE selected the five corridors analyzed in the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (FEIS) without adequate study and in violation of National Environmental Policy Act (NEPA). DOE did not inspect the corridors from the ground or the air before selecting them. This lack of inspection is contrary to standard industry practice, and accounts for the DOE's lack of knowledge of the corridors.

DOE failed to comply with NEPA when selecting the five candidate corridors. DOE should have conducted scoping sessions focused on potential rail corridor identification and provided opportunities for public comment before selecting the five corridors analyzed in the FEIS. Complying with NEPA would have informed DOE of the problems associated with the five candidate corridors and of the advantages of alternative corridors, such as the Mina, Crucero, Valley, and Arden corridors, which were wrongly rejected based on insufficient criteria, information, and analyses. NEPA was intended to help government agencies avoid the very mistakes that DOE made in selecting the five candidate corridors without the benefit of local knowledge and public participation.

2. DOE also selected the Caliente Corridor without adequate study and in violation of NEPA. DOE did not inspect the corridors from the ground and conducted only a cursory over-flight before selecting the Caliente Corridor. This lack of inspection is contrary to standard industry practice, and accounts for DOE's lack of knowledge of the Caliente Corridor prior to its selection. As a result, DOE could not provide a clear explanation and definitive reason for its selection of the Caliente Corridor in its Record of Decision.

DOE violated NEPA by providing inadequate opportunities for public participation in the corridor preference and selection decisions, despite recognition of the need to do so. On page S-2 of the FEIS, DOE said that it would "identify a preference for one of the rail corridors in consultation with affected stakeholders, particularly the State of Nevada." However, DOE identified its preference for the Caliente Corridor without consulting affected stakeholders, including affected property owners. In fact, DOE did not even ask for public comments on its stated preference for the Caliente Corridor and provided inadequate opportunities for public participation before selecting the Caliente Corridor. Again, the Department failed to take advantage of the benefits of public participation, particularly the local knowledge of residents and institutions.

As stated in my other letter, we urge DOE to be a "good neighbor" by adopting an alignment that bypasses the Garden Valley and the "City" sculpture entirely. DOE has an opportunity to avoid yet another barrage of lawsuits and avoid alienating Nevada citizens who are not yet among their die-hard opponents. We urge DOE to seize these opportunities.

Sincerely,



Michael Giovan
President and Director
Dia Art Foundation